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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-461

STEVE MODLA,

Petitioner,

v.

SOUTHSIDE HOSPITAL and SCOTTY PARKER,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

Opinions Below

The opinion of the Arizona trial court is not reported in any official publication. A copy of the judgment entered by the Arizona trial court is appended to the petitioner's Petition For Writ of Certiorari. The opinion of the Arizona Court of Appeals is reported at 17 Ariz.App. 54, 495 P.2d 494 (1972). The opinion of the Arizona Supreme Court is not printed in any official publication. A copy of the Arizona Supreme Court's order denying a Petition For Review of the decision of the Arizona Court of Appeals is appended to the petitioner's Petition For Writ of Certiorari.

Jurisdiction

The respondents disagree with the petitioner's statement as to this Court's jurisdiction. In his jurisdictional statement, the petitioner states that his Petition for certiorari was filed within ninety days of the date upon which the Arizona Supreme Court denied review of the decision of the Arizona Court of Appeals. As a matter of fact, the record will show that the petitioner's Petition For Writ of Certiorari was filed one day late and no proper request for extension of time was filed with or granted by this Court. It is the position of the respondents that the petitioner's failure to timely file his Petition For Writ of Certiorari deprives this Court of jurisdiction to consider this matter.

The Arizona Supreme Court denied the petitioner's request for review of the decision of the Arizona Court of Appeals on June 20, 1972. The petitioner did not file his Petition For Writ of Certiorari with this court until September 19, 1972. Thus, the petitioner's Petition For Writ of Certiorari was not filed with the United States Supreme Court until 91 days after the decision of the Arizona Supreme Court was entered.

The time requirements for the petitioner's attempted Petition For Writ of Certiorari are governed by the Acts of June 25, 1948, c. 646, 62 Stat. 961 and May 24, 1949, c. 139, sec. 106, 63 Stat. 104, 28 U.S.C. sec. 2101, which provides, in pertinent part:

> (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review *shall be taken or applied for within ninety days after the entry of such judgment or decree.* A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days. (Emphasis added).

The procedure for obtaining an extension of time within which to file a Petition For Writ of Certiorari is governed by Rule 22(4) and Rule 34 of the Rules of the Supreme Court of the United

States. Rule 22(4) provides that an application for extension of time within which to file a Petition For Writ of Certiorari must set out the grounds on which jurisdiction of this Court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons why the granting of an extension of time is deemed justified. Rule 34 provides, in subsection 2, that whenever any justice of this Court or the clerk is empowered to extend the time within which a party may petition for a Writ of Certiorari, an application seeking such extension must be presented to the clerk within the period sought to be extended. Subdivision 2 of Rule 34 further provides that applications for extension of time to file petitions for certiorari shall be submitted at least ten days before the expiration of the period sought to be extended and will not be granted except in the most extraordinary circumstances if filed during the last ten days of such period.

The petitioner did not file his petition For Writ of Certiorari within the time period provided by law, nor did he properly apply for or obtain an extension of time from this Court in which to file his Petition For Writ of Certiorari. It has long been settled by the decisions of this Court that an application to this Court for a Writ of Certiorari to a state court cannot be entertained if the application is not filed within the statutory time period. *Rust Land & Lumber Co. v. Jackson,* 250 U.S. 71, 39 S.Ct. 424, 63 L.Ed. 850 (1919). The requirement for timely filing a Petition For Writ of Certiorari is jurisdictional. *Toledo Scale Co. v. Computing Scale Co.,* 261 U.S. 399, 43 S.Ct. 458, 67 L.Ed 719 (1923).

Thus, since the petitioner did not timely file his Petition For Writ of Certiorari and did not properly make request for and obtain an extension of time from this Court, he has thereby deprived this Court of jurisdiction to consider the matters attempted to be raised in his Petition For Writ of Certiorari.

In addition, the petitioner states in his jurisdictional statement that this Court's jurisdiction is invoked under 28 U.S.C. §1257(3) in that the petitioner was denied due process of law under the Fourteenth Amendment to the United States Constitution. This statement comes as a complete surprise to the respondents.

The respondents are not aware of any Federal constitutional issue having been raised by the petitioner in the courts of the State of Arizona. There were some vague generalizations made by the petitioner in the trial court in the State of Arizona to constitutional rights being infringed. However, the respondents are aware of no references in the trial court record to a claimed Federal constitutional right. When the petitioner filed his appeal with the Arizona Court of Appeals, he made a vague reference to denial of due process of law. The sum total of the ptitioner's alleged raising of a constitutional issue in the Arizona Court of Appeals can be set forth by quoting an issue and argument which he raised in his Opening Brief to the Arizona Court of Appeals at page 38-39, as follows:

> (D) *THE LOWER COURT, THE HONORABLE JUDGE MARILYN A. RIDDELL, ERRED BY NOT GRANTING PLAINTIFF'S MOTION FOR A CONTINUANCE PRIOR TO THE HEARING OF SUMMARY JUDGMENT OF JULY 10, 1970. ON JUNE 3, 1970, PLAINTIFF'S ATTORNEY, JAMES KEPPEL WITDREW LEAVING THE PLAINTIFF WITHOUT AN ATTORNEY.* THROUGHOUT PLAINTIFF'S RESPONSE TO THE MOTION FOR SUMMARY JUDGEMENT, THE PLAINTIFF ASKED THE COURT FOR A CONTINUANCE AND I QUOTE:
>
> "The short period allocated to me by the court to prepare my briefs for summary judgment against defendant in my sickness is quite impossible to properly prepare." (A.R. pg. (144).
>
> "Without being represented by counsel is in itself a flagrant denial of due process of law. I am at this moment desperately seeking an attorney of standing." (A.R. pg. 146).

"As of now my temporary attorney, James Keppel, withdrew because his dad is practicing medicine as a doctor at the Mesa Southside Hospital." (A.R. pg. 146).

On June 22, 1970, plaintiff filed a letter with the court from a Doctor Carolyn F. Gerster, M.D., recommending that Mr. Modla have two weeks rest. Plaintiff submits that the foregoing in effect constituted a motion for a continuance by the plaintiff and that the court under the circumstances erred in not granting plaintiff a continuance until he could obtain counsel to represent himself in the above captioned matter.

As can be seen from reading the above-quoted portion of the Petitioner's Opening Brief on his appeal to the Arizona Court of Appeals, he makes a vague reference to denial of due process of law, but does not specifically base this argument upon the due process clause of the United States Constitution. Nor did he present any authorities to the Arizona Court of Appeals which would support his vague claim of denial of due process of law. For all that appears from the record, it is not known whether the petitioner was basing his due process argument upon the provisions of the Constitution of the United States or whether it was based upon the due process clause of Art. 2, § 3, of the Constitution of the State of Arizona, 1 Arizona Revised Statutes. Additionally, this Court will see from reviewing the judgment of the Arizona trial court, the formal opinion of the Arizona Court of Appeals and the order of the Arizona Supreme Court that none of the Arizona courts ruled upon any Federal constitutional issues. Obviously, the Arizona courts did not deem it necessary to rule upon any Federal constitutional issues because no such issues were properly raised by the petitioner.

It is well settled that the United States Supreme Court will not decide Federal constitutional issues unless the Federal question was raised and decided in the state court below. *Cardinale v. Louisiana,* 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969). When the highest state court has failed to pass upon a Federal question, it will be assumed that the omission was due

to want of proper presentation in the state courts, unless the aggrieved party can affirmatively show the contrary. *Street v. New York,* 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969). It is essential to the Supreme Court's jurisdiction that there be an explicit and timely insistence in the state courts of a Federal constitutional right. *Charleston Federal Savings & Loan Association v. Alderson,* 324 U.S. 182, 65 S.Ct. 624, 89 L.E. 857 (1945), rehearing denied, 324 U.S. 888, 65 S.Ct. 863, 89 L.Ed. 1436 (1945).

In *Thomas v. Iowa,* 209 U.S. 258, 28 S.Ct. 487, 52 L.Ed. 782 (1908), in dismissing a writ of error to the Supreme Court of the State of Iowa for want of jurisdiction, this Court stated:

> The judgment of the state supreme court does not contain the slightest allusion to any Federal question. The chief justice of the state supreme court, after the final judgment in that court, signed a bill of exceptions, which contains the following statement:
>
> 'Under the rules of practice in the supreme court of Iowa no assignment of errors is required or allowed; but the questions made and discussed by counsel on the hearing in the supreme court were such as arise upon the record, the exceptions, and the motion in arrest, and for a new trial, as shown hereinbefore, and, among them, that the court below erred in giving to the jury each of the instructions set out in this bill of exceptions, and numbered, respectively, two, three, four, five, six, and fourteen, and that by said instructions the said district court of Iowa in and for Polk county denied to this plaintiff in error the right of trial by jury, in that the court, by said instructions, determined the degree of the crime of murder of which the jury should find the defendant guilty, if at all, whereas, by the common law and by the express statute of Iowa, the degree of the offense is a matter for the jury to determine, thereby in effect deprived the plaintiff in error of *his liberty without due process of law.* (Emphasis by the Court.)
>
> 'That, upon the trial and hearing of the case in the supreme court of Iowa, the parties, respectively, to wit, the state of

Iowa and also the defendant and appellant, Charles Thomas, by their respective counsel, submitted arguments, both in print and orally, wherein they discussed the questions aforesaid, and all others arising upon the record.'

The Federal question, if it can be found in the record at all, must be found in this statement. It is too late to raise it for the first time in the petition for a writ of error from this court or in the assignments of error here. Montata ex rel. Haire v. Rice, 204 U.S. 291, 51 L. ed. 490, 27 Sup. Ct. Rep. 281. All that appears in the statement is that exceptions were taken to certain parts of the charge to the jury, because they "in effect deprived the plaintiff in error of his liberty without due process of law;' and that the question thus raised was discussed before the supreme court of the state. But something more than this vague and inferential suggestion of a right under the Constitution of the United States must be presented to the state courts to give us the limited authority to review their judgments which exists under the Constitution and is regulated by § 709 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 575). A mere claim in the court below that there has been a denial of due process of law does not of itself raise a Federal question with sufficient distinctness to give us jurisdiction to consider whether there has been a violation of the 14th Amendment to the Constitution. . . . (P. 488 of 28 S.Ct.)

And, in ***Kipley v. People of Illinois,*** 170 U.S. 182, 18 S.Ct. 550, 42 L.Ed. 998 (1898), in dismissing a writ of error to the Supreme Court of the State of Illinois to challenge the constitutionality of an Illinois statute, this Court stated:

> We are of opinion that this court is without jurisdiction to review the final judgment of the supreme court of Illinois in these cases. The answer makes no reference whatever to the constitution or laws of the United States. It is true that it avers that the Illinois civil service act was 'unconstitutional and void.' But when the jurisdiction of this court is invoked for the protection, against the final judgment of the highest court of a state, of some title, right, privilege, or immunity secured by the constitution or laws of the United States, it must appear, expressly or by necessary intendment, from the record, that

such right, title, privilege, or immunity was 'specially set up or claimed' under such constitution or laws. Rev. St. p. 709. Our jurisdiction cannot arise in such case from inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case up intended to assert a federal right. Oxley Stave Co. v. Butler Co., 166 U.S. 648, 17 Sup. Ct. 708; Levy v. Superior Court, 167 U.S. 175, 177, 17 Sup. Ct. 769. The averment in the answer that the statute of Illinois was unconstitutional and void must be taken as intended to apply to the constitution of that state, and not to the constitution of the United States. . . . (Pp. 551-552 of 18 S.Ct.)

Applying the above-stated law to the case presently before this Court, it is respectfully submitted that the petitioner has failed to properly invoke the jurisdiction of this Court by his Petition For Writ of Certiorari in that the Petition For Writ of Certiorari was not timely filed and the petitioner did not raise or preserve a Federal constitutional issue in the courts of the State of Arizona. Therefore, it is respectfully submitted that this Court does not have jurisdiction of the petitioner's attempted Petition for Writ of Certiorari and that this Court should dismiss the petitioner's Petition For Writ of Certiorari for want of jurisidction.

Question Presented for Review

Assuming for the purposes of argument only that the petitioner has properly invoked the jurisdiction of this Court, then the question presented to this Court can be set forth as follows:

Whether the petitioner was denied due process of law and right to counsel under the United States Constitution when the trial judge in the Arizona Superior Court denied the petitioner a continuance on the respondents' Motion For Summary Judgment.

Statement of the Case

The respondents do not believe that the petitioner's statement of the case properly sets forth the background necessary for a determination of the question presented for review. Therefore the respondents will restate the case. Respondents have been advised

by the Arizona Court of Appeals that the record before the Arizona Court of Appeals has been transmitted to the United States Supreme Court. The official record of the case before the Arizona Court of Appeals is contained in the Abstract of Record filed in the Arizona Court of Appeals. In the respondents' statement of the case, reference will be made to the Abstract of Record which was filed in the Arizona Court of Appeals, and the Abstract of Record will be referred to as "A.R." followed by the appropriate page number.

The petitioner, STEVE MODLA, instituted an action in the Superior Court of the State of Arizona in and for the County of Maricopa against SOUTHSIDE HOSPITAL and John Does I through X by filing a Complaint on April 7, 1969 (A.R. 1-5). The Complaint alleged a claim for medical malpractice and was filed for MR. MODLA by his attorney, Robert J. Grygiel. Petitioner filed another Complaint in the Superior Court of the State of Arizona in and for the County of Maricopa on April 7, 1969, against SCOTTY PARKER (A.R. 6-10). This Complaint alleged a claim for slander. This Complaint was also filed for MR. MODLA by his then attorney, Robert J. Grygiel.

The respondent, SCOTTY PARKER, filed an Answer to the petitioner's Complaint on April 30, 1969 (A.R. 11-14). An Answer was filed on behalf of the respondent, SOUTHSIDE HOSPITAL, also on April 30, 1969 (A.R. 15-19).

On May 6, 1969, and May 9, 1969, the petitioner's original counsel, Mr. Grygiel, withdrew as counsel on both cases with the consent of the petitioner (A.R. 22-24 and A.R. 25-27).

On May 21, 1969, counsel for the respondents moved to consolidate the two actions which had been filed by the petitioner (A.R. 28-31). A hearing was held on the Motion to Consolidate on June 25, 1969. The trial court granted the Motion to Consolidate and earnestly suggested to the petitioner that he secure counsel to represent him (A.R. 36). After being advised by the

trial judge that he should secure counsel, the petitioner, STEVE MODLA, made a statement to the court to which the court replied. This colloquy between the petitioner and the trial judge was as follows:

> Mr. Modla: I cannot afford, in as much as I have an appeal to the Justice Department of the United States, whereas I have had discrimination by doctors, I feel that I have defended myself mercilessly against vicious attacks and I can't afford a continuation of attorney fees. That is my ardent plea, that you will accept me as I am, man to man, without any hidden book closets. My expression of the right to defend myself.
>
> I would thank you for any—
>
> The Court: No, Mr. Modla, you overlook the fact this is not defending yourself, you are going forward in a lawsuit, you are the plaintiff and therefore you need someone to go forward. It isn't a matter of you defending yourself, it's a matter of going forward (A.R. 37).

Again, at the same hearing on June 25, 1969, the trial judge and counsel for the respondents, Mr. Salmon, attempted to suggest to the petitioner that he should have counsel to represent him, and this conversation occurred as follows:

> The Court: Well, now, for example, you were at the deposition—I took the trouble to read the file—You were at a deposition and you are now in a position where the other attorneys can move to dismiss your lawsuit, so the Court is just going to suggest to you again that if you are interested in handling this lawsuit that you secure an attorney, or you are just going to have problems. And, I think for your own peace of mind you ought to have some advice, some advice of a lawyer, if you want to. You are the plaintiff, it's now—If you were defending an action, I would see where there would be come (sic) possibility that a Court might be able to let a layman defend himself and have some semblance of fair play, but where the burden is on you to go forward with the evidence, and that is your burden, you have said this man did you wrong, you have said this hospital did you wrong, the burden is on you.

You are just about like — You or I being in the operating room with somebody who is a brick layer going to operate on us. We just don't know what we are doing, see? So, the Court is just going to suggest to you again that if you are interested in the lawsuit, that you had better secure some legal help. Find.

Mr. Salmon: If it please the Court —

The Court: Yes?

Mr. Salmon: Perhaps if we point out to Mr. Modla, maybe Lawyers Referral, or Legal Aid could help him (A.R. 39-40).

Thereafter, on October 31, 1969, the respondents filed a Motion For Summary Judgment (A.R. 42-70). Over a month later, on December 5, 1969, petitioner filed a document with the new trial judge with a plea that a continuance be granted so that he could seek counsel (A.R. 71). The trial judge treated the document as a Motion For Continuance.

Petitioner appeared on his own behalf for the oral argument on the Motion For Summary Judgment, which occurred on December 9, 1969.

The Motion For Summary Judgment was granted and a formal Judgment recited that the court had considered the petitioner's request for a continuance with oral argument in support of the Motion and in opposition thereto, and the court found that the petitioner had had more than adequate opportunity to obtain counsel and that his Motion For Continuance was not well taken (A.R. 74-75).

The petitioner then attempted to file a Notice of Appeal to the Arizona Court of Appeals from the Judgment entered by the trial court on December 11, 1969. The petitioner failed to properly perfect his appeal. Thereafter, on February 26, 1970, petitioner filed a Motion For Rehearing of the granting of Summary Judgment (A.R. 79-80). Again, on March 25, 1970, the petitioner appeared by and through counsel, James H. Keppel, and

filed a Motion For Relief From Final Judgment pertaining to the Judgment entered on December 11, 1969 (A.R. 84-85). The petitioner's Motion was granted on May 25, 1970, and the Judgment was set aside (A.R. 183).

On May 26, 1970, petitioner's new counsel, James H. Keppel, filed a Motion For Leave to Withdraw as Counsel of Record for the reason that the petitioner had refused to abide by advice given by counsel and the petitioner had indicated the desire to represent himself in any further proceedings, thereby rendering ineffectual the attorney-client relationship. Thereafter, on June 2, 1970, James H. Keppel filed another request for leave to withdraw as counsel of record for the reason that the petitioner had indicated a desire to represent himself in any further proceeding. Attached to this request for leave to withdraw was a consent of the petitioner in which the petitioner stated that he consented to and approved of the withdrawal of James H. Keppel as his attorney of record for the reason that the petitioner desired to represent himself in any further proceeding or retain other counsel. This request to withdraw as counsel was approved by the court and a formal Order was signed by a judge of the Maricopa County Superior Court on June 3, 1970. (These motions to withdraw and the Order of the Court were not contained in the Abstract of Record on Appeal, however, they are in the original Superior Court record.)

On June 4, 1970, a judge of the Maricopa County Superior Court granted the petitioner until June 15, 1970, in which to submit opposing memorandum with attached Affidavits in opposition to the respondents' Motion For Summary Judgment. On or about June 22, 1970, the petitioner filed a letter with the court from a Dr. Carolyn F. Gerstes, M.D., in which the doctor recommended that MR. MODLA have two weeks' rest. Finally, on July 2, 1970, the petitioner filed a response to the Motion For Summary Judgment and the petitioner, himself, moved for Summary Judgment. The matter was orally argued to the trial

court on July 10, 1970. The trial court granted the respondents' Motion For Summary Judgment, and a formal Judgment was approved by the trial judge on July 23, 1970 (A.R. 185). Thereafter, the petitioner obtained new counsel and filed a Notice of Appeal to the Arizona Court of Appeals on September 15, 1970 (A.R. 186).

The Court of Appeals of the State of Arizona rendered its opinion on April 6, 1972. This opinion is found at 17 Ariz.App. 54, 495 P.2d 494. A Motion For Rehearing was denied by the Arizona Court of Appeals on May 2, 1972. Thereafter, the petitioner petitioned the Arizona Supreme Court to review the decision of the Arizona Court of Appeals. Review was denied by the Arizona Supreme Court on June 20, 1972, and formal notice of the denial was given on June 21, 1972.

Reasons for Denying the Writ

The Petition For Writ of Certiorari should be denied for two separate and independently sufficient reasons:

(1) As has been previously argued in the jurisdictional statement set forth above, the petitioner has failed to properly invoke this Court's jurisdiction, and the Writ should be denied by this Court for lack of jurisdiction.

(2) Assuming for the purposes of argument only that the petitioner has properly invoked this Court's jurisdiction, the Writ should still be denied since the Arizona state courts have not decided any Federal question of substance that has not heretofore been determined by this Court, nor have the state courts decided any Federal question in a way not in accord with applicable decisions of this Court.

Argument

The essence of petitioner's Petition For Writ of Certiorari is that he has been denied due process of law and right to counsel in violation of the United States Constitution since the trial court

did not grant him a continuance in order that he might obtain assistance of counsel to oppose the respondents' Motion For Summary Judgment.

It is well settled by the decisions of this Court that, if in any case, civil or criminal, a state or Federal court were *arbitrarily* to refuse to hear a party by counsel, employed and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. *Powell v. State of Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932); *Reynolds v. Cochran*, 365 U.S. 525, 81 S.Ct. 723, 5 L.Ed.2d 754 (1961). Even in criminal cases, this rule has been construed to mean that a defendant should be afforded a *fair* opportunity to secure counsel of his own choice. *Powell v. State of Alabama, supra.*

There can be little doubt but that the petitioner in the present case was afforded more than an adequate and fair opportunity to obtain counsel to represent him. The record reflects that the petitioner was represented twice by counsel before the last hearing on the Motion For Summary Judgment and that he was urged by the court and by respondents' attorney to employ other counsel. He ignored this advice and chose to represent himself each time up until the last minute, when it was time to argue the Motion For Summary Judgment. Each time the Motion For Summary Judgment was set for argument, the petitioner would appear and contend that he was sick and without counsel and that he was being deprived of his right to counsel. The most succinct response which can be made to the petitioner's argument that he was denied due process of law and right to counsel is found in the language of the Arizona Court of Appeals wherein the Court stated:

> The last contention urged by plaintiff is that the trial court erred in failing to grant him a continuance prior to the hearing on appellees' second motion for summary judgment. The grounds urged at the time of making the motion were that appellant was without counsel and he was ill.

A motion for a continuance is directed to the sound discretion of the trial court predicated on good grounds. Evans v. Lundgren, 11 Ariz.App. 441, 465 P.2d 380 (1970). The motion for summary judgment was originally set for July 10, 1970. On June 3, the court granted appellants' counsel his request for leave to withdraw. In the order appellant consented to and approved of withdrawal of his counsel and expressed a desire to represent himself or obtain other counsel. In addition the order advised appellant of the date set for hearing appellees' motions for summary judgment and appellant acknowledged that he would be prepared for the same. After withdrawal of counsel, the court granted several extensions of time for appellant to submit opposing memoranda with attached affidavits. *In view of the fact that appellant created the situation of lack of counsel which he now claims to be prejudicial, we do not find the trial court abused its discretion in denying a continuance on that ground.*

In regard to the illness which supposedly prevented appellant from properly preparing his case, he submitted a letter from a physician who merely 'recommended that Mr. Modla have two weeks rest.' The motion was properly denied because of the insufficiency of the supporting affidavit. SEE, 68 A.L.R. 2d 470 for a thorough discussion of the factors to be considered in passing upon a motion for continuance on the grounds of illness. (Emphasis added.) (P. 498 of 495 P.2d)

Conclusion

The petitioner has failed to properly invoke the jurisdiction of this Court to grant a Writ of Certiorari to the Supreme Court of the State of Arizona. In addition, the petitioner has not shown in any way whatsoever that the Arizona state courts have decided a Federal question of substance not heretofore determined by this Court, nor has he shown where the state courts have, in any manner, decided a Federal question in a way not in accord with applicable decisions of this Court. It is therefore respectfully submitted that the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

JENNINGS, STROUSS & SALMON

By NICHOLAS UDALL

Nicholas Udall
111 West Monroe
Phoenix, Arizona 85003
Attorneys for Respondents

Certificate of Service

I, NICHOLAS UDALL, a member of the Bar of the United States Supreme Court, do hereby certify that on the 12 day of October, 1972, three (3) copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona were served by mail, by depositing the same in a United States Post Office in Phoenix, Arizona, with first class postage prepaid, addressed to:

Steve Modla
1060 South Mesa Drive
Mesa, Arizona 85202

petitioner in propria persona. I further certify that all parties required to be served have been served. I further certify that service has been made in accordance with Rule 33(1) and Rule 33(3)(b) of the Rules of the Supreme Court of the United States.

NICHOLAS UDALL

Nicholas Udall

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